DAMAGES FOR FRIGHT

IN February, 1888, the Judicial Committee of the Privy Council, in the case of *Victorian Railways Commissioners* v. *Coultas*,[1] decided that the plaintiff was not entitled to recover damages for nervous shock caused by the defendant's negligence, in the absence of proof of actual impact, even though serious physical injuries resulted from the shock.

Sir Richard Couch, in delivering the judgment of the court, said:

"The learned counsel for the respondents was unable to produce any decision of the English Courts in which, upon such facts as were proved in this case, damages were recovered. . . . It is remarkable that no precedent has been cited of an action similar to the present having been maintained or even instituted, and their Lordships decline to establish such a precedent."

In the same month of same year the Supreme Court of New York, in *Lehman* v. *Brooklyn City R. Co.*,[2] an action for physical injuries due to nervous shock caused by the plaintiff's being frightened at a runaway horse, likewise denied a recovery. Here also it was said by the court, speaking through Dykman, J.: "We have been unable to find either principle or authority for the maintenance of this action and we have been referred to none by the counsel."

Such was the origin, simultaneous in England and America, of the doctrine denying recovery for physical injuries due to fright without impact. In the New York case no reason was given for the rule save the want of a precedent allowing recovery. In the English case other reasons were given, though not regarded as necessary. Both courts rested their decisions upon a doctrine which, if given universal application, would put an end to the growth of law by judicial decisions. If applied at an earlier period so as to deny new remedies for new wrongs, English law would have remained in its primitive state instead of attaining its present splendid development and expansion.

---

[1] 13 A. C. 222, 226 (1888).

[2] 47 Hun (N. Y.), 355, 356 (1888).

The Privy Council and the Supreme Court of New York had spoken.

Acquiescence in their decisions would make an end to suits for physical injuries due to nervous shock without impact. But so far from the cases cited making an end of such suits, they constitute only the beginning. And the frequency with which they have continued to be brought is the best evidence of the profound dissatisfaction of the bar with the doctrine of these pioneer cases.

In the multitude of actions for nervous shock that have been brought within the last thirty years, many of the courts have elected to stand on what they term "the ancient ways." [3] Neither in Great Britain nor in America, however, have there been wanting judges of broader vision and more liberal spirit, with the result that in a number of jurisdictions their jurisprudence has been enriched and expanded by the allowance of damages for physical injuries, even though such injuries have been produced by the wrongful act of the defendant operating upon the nervous system of the plaintiff without actual impact.

The doctrine of the Coultas case was repudiated in Ireland within two years after that decision was announced. This was in the case of *Bell* v. *Great Northern Ry. of Ireland*,[4] in the Exchequer Division, in which Palles, C. B., in an able opinion, criticized the Coultas case and refused to follow it. In taking this action the court relied on the earlier unreported Irish case of *Byrne* v. *Great Southern and Western R. Co.* of Ireland, decided in the Common Pleas Division in 1882 and affirmed on appeal, and also on the intrinsic reason of the rule allowing a recovery.

In England, the doctrine of the Coultas case was first questioned in *Pugh* v. *London, etc. Ry. Co.*,[5] in which there was said of it by Lord Esher, M. R.: "That case is different, and I should not like to express an opinion as to whether we ought to follow it until I am forced to do so." The next year, in the case of *Wilkinson* v. *Downton*,[6] an action for injury resulting from nervous shock and injury to plaintiff caused by the intentional act of defendant in frightening the plaintiff, the Coultas case was referred to as having

[3] Huston *v.* Freemansburg, 212 Pa. 548, 61 Atl. 1022 (1905), per Mitchell, C. J.

[4] 26 L. R. Ir. 428 (1890).

[5] [1896] 2 Q. B. 248, 250.

[6] [1897] 2 Q. B. 57.

been questioned in *Pugh* v. *London, etc. Ry. Co.*,[7] and as having been repudiated in Ireland, and on these grounds and also because not in point upon a case of fright resulting from a wilful act, the Queen's Bench Division refused to apply its doctrine to the facts of the case before it. In *Dulieu* v. *White & Sons*[8] the identical principle was involved upon which the Coultas case was decided. The plaintiff, a woman, while standing behind the bar of her husband's public house, was frightened by a pair of horses and van being driven into the house, through the negligence of the defendant's servant, with the result that she sustained severe nervous shock, which in turn caused a miscarriage. In elaborate opinions by Kennedy, J., and Phillimore, J., the Coultas case was repudiated. In adopting this attitude the judges of the King's Bench Division were influenced partly by the previous English and Irish cases referred to above, and partly by reason of the fact that the judgment in that case had been "unfavourably reviewed by legal authors of recognized weight such as Mr. Sedgwick, Sir Frederick Pollock, and Mr. Beven;" [9] but the two judges writing opinions also examined at length the principle involved and stated fully the reasons upon which they justified a recovery. Later cases in the Admiralty Division of the High Court of Justice [10] and in the House of Lords [11] treat *Dulieu* v. *White* [12] as settling the law in England; and it may, therefore, be said that the Coultas case has been overruled and the doctrine established in England that there may be recovery for physical injuries resulting from nervous shock without proof of actual impact.

In Scotland the doctrine of the Coultas case was repudiated by the Court of Session in 1910 in the case of *Gilligan* v. *Robb*,[13] in which a woman was allowed to recover for illness due to nervous shock, without impact, caused by a cow bolting from the street into the house in which the plaintiff was. And in *Coyle* v. *Watson*[14] the House of Lords, on an appeal from the Court of Session treated

---

[7] [1896] 2 Q. B. 248.
[8] [1901] 2 K. B. 669.
[9] Dulieu *v.* White & Sons, [1901] 2 K. B. 669, 677, per Kennedy, J.
[10] The Rigel, [1912] P. 99.
[11] Coyle *v.* Watson, [1915] A. C. 1.
[12] [1901] 2 K. B. 669.
[13] [1910] S. C. 856.
[14] [1915] A. C. 1.

the case of *Gilligan* v. *Robb* [15] as establishing the rule in Scotland in favor of recovery for nervous shock without impact.

The present state of the law in Great Britain and Ireland as to the recovery of damages for nervous shock without impact is said by Lord Shaw of Dunfermline in *Coyle* v. *Watson* [16] to be as follows:

"But in England, in Scotland, and in Ireland alike, the authority of *Victorian Railways Commissioners* v. *Coultas* has been questioned, and, to speak quite frankly, has been denied. I am humbly of opinion that the case can no longer be treated as a decision of guiding authority. . . . I should add that other cases were cited showing it to be fully established by authority — recent and strong authority — that physical impact or lesion is not a necessary element in the case of recovery of damage in ordinary cases of tort."

Thus the law in England, Scotland, and Ireland is settled in favor of a recovery for physical injuries resulting from nervous shock caused by the wrongful act of the defendant, without actual impact.

Unfortunately this cannot be said also of America. The next case arising here after that of *Lehman* v. *Brooklyn City R. Co.*[17] was *Hill* v. *Kimball*,[18] in which the Supreme Court of Texas in 1890 treating the case as one of first impression, and without the doubtful light of the Coultas [19] and Lehman [20] cases, held that the plaintiff was entitled to recover for nervous shock resulting in a miscarriage even though there was no physical impact. Notwithstanding, however, the extensive circulation of this opinion in the official reports and in the Southwestern and the Lawyers Reports Annotated, it seems not to have been brought to the attention of the court in *Ewing* v. *Pittsburgh, etc. R. Co.*,[21] nor in *Haile's Curator* v. *Texas & Pacific R. Co.*,[22] nor in *Mitchell* v. *Rochester Ry. Co.*,[23]

[15] [1910] S. C. 856.

[16] A. C. 1, 13, 14 (1915). And see also, to the same effect, 21 HALSBURY'S LAWS OF ENGLAND, 488.

[17] 47 Hun, 355 (1888).

[18] 76 Tex. 210, 13 S. W. 59 (1890).

[19] 13 A. C. 222 (1888).

[20] 47 Hun (N. Y.), 355 (1888).

[21] 147 Pa. St. 40, 23 Atl. 340 (1892).

[22] 60 Fed. 557, 9 C. C. A. 134 (1894).

[23] 151 N. Y. 107, 45 N. E. 354 (1896) (reversing 77 Hun, 607, 28 N. Y. Supp. 1136 (1894)).

and in these cases the Supreme Court of Pennsylvania, the United States Circuit Court of Appeals for the Fifth Circuit, and the Court of Appeals of New York threw the weight of their authority in favor of the rule denying recovery. In another year these courts were joined by the Supreme Court of Massachusetts in *Spade* v. *Lynn & Boston R. Co.*,[24] and it could safely be said that the rule thus supported by the courts of last resort in Massachusetts, New York, and Pennsylvania had become the weight of American authority. In fact the Ewing, Mitchell, and Spade cases have been the leading cases on this subject in America, and due to their influence and that of the Coultas case now overruled in the jurisdiction of its origin, the rule has been established in a number of the American jurisdictions[25] denying a recovery for nervous shock without actual impact.

This doctrine, however, was not destined to meet with unanimous acceptance in America. It was repudiated by the Supreme Court of Minnesota in 1892 in the case of *Purcell* v. *St. Paul, etc. Ry. Co.*,[26] in which the court ignored the Lehman and Coultas cases cited by counsel, and seems not to have had the Mitchell case or those from Pennsylvania and Massachusetts brought to its attention. Again, the Supreme Court of South Carolina in 1897, in the case of *Mack* v. *South Bound R. Co.*,[27] after an elaborate review of the decided cases and of the views of the text-writers on the subject, adopted the rule of liability. Following these two leading

[24] 168 Mass. 285, 47 N. E. 88 (1897).

[25] The following is a list of jurisdictions in which recovery is denied, with a recent or leading case in each:

U. S. Haile's Curator *v.* Texas & Pacific R. Co. (U. S. Cir. Ct. of App., Fifth Cir.), 60 Fed. 557 (1894).

Ark. St. Louis, etc. R. Co. *v.* Bragg, 69 Ark. 402, 64 S. W. 226 (1901).

Ill. Braun *v.* Craven, 175 Ill. 401, 51 N. E. 657 (1898).

Ind. Terre Haute Electric R. Co. *v.* Lauer, 21 Ind. App. 466, 52 N. E. 703 (1899).

Ky. McGee *v.* Vanover, 148 Ky. 737, 147 S. W. 742 (1912).

Mass. Spade *v.* Lynn, etc. R. Co., 168 Mass. 285, 47 N. E. 88 (1897).

Mich. Nelson *v.* Crawford, 122 Mich. 466, 81 N. W. 335 (1899).

N. J. Ward *v.* West Jersey, etc. R. Co., 65 N. J. L. 383, 47 Atl. 561 (1900).

N. Y. Mitchell *v.* Rochester Ry. Co., 151 N. Y. 107, 45 N. E. 354 (1896).

O. Miller *v.* Baltimore, etc. R. Co., 78 Oh. St. 309, 85 N. E. 499 (1908).

Pa. Ewing *v.* Pittsburgh, etc. R. Co., 147 Pa. St. 40, 23 Atl. 340 (1892).

[26] 48 Minn. 134, 50 N. W. 1034 (1892).

[27] 52 S. C. 323, 29 S. E. 905 (1897).

cases, the courts of an increasing number of jurisdictions have been adopting the rule allowing a recovery.[28]

This discordant state of the American authorities challenges attention to the reasons upon which the variant decisions are based. In the end, the rule of justice may be expected to prevail. If, therefore, justice is on the side of the cases denying recovery for injury due to fright without impact, the cases so holding may be viewed with complacency, and the courts of those jurisdictions allowing a recovery may be regarded as having been misled by sympathy or desire for popular favor. If, however, the rule against recovery is not based on reason, it may be expected to yield to that which is more in conformity with the maxim of the law that for every wrong there is a remedy.

The principal reasons assigned by the courts for denying recovery in the class of cases in question are:

First, that since fright caused by negligence is not itself a cause of action, none of its consequences can give a cause of action;

Second, that the damages resulting from fright are too remote;

Third, that it is contrary to public policy to allow recovery for damages for personal injuries resulting from fright.

These reasons will be discussed in the order stated:

First, since there can be no recovery for mere fright there can

---

[28] The following is a list of jurisdictions in which the rule of recovery prevails, with a recent or leading case in each:

Ala. Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 73 So. 205 (1916).
Cal. Lindley *v.* Knowlton, 179 Cal. 298, 176 Pac. 440 (1918).
Ga. Goddard *v.* Watters, 14 Ga. App. 722, 82 S. E. 304 (1914).
Ia. Watson *v.* Dilts, 116 Iowa, 249, 89 N. W. 1068 (1902).
Kan. Whitsell *v.* Watts, 98 Kan. 508, 159 Pac. 401 (1916).
La. Stewart *v.* Arkansas Southern R. Co., 112 La. 764, 36 So. 676 (1904).
Md. Green *v.* Shoemaker, 111 Md. 69, 73 Atl. 688 (1909).
Minn. Purcell *v.* St. Paul City R. Co., 48 Minn. 34, 50 N. W. 1034 (1892).
N. C. Kimberly *v.* Howland, 143 N. C. 398, 55 S. E. 778 (1906).
Ore. Salmi *v.* Columbia, etc. R. Co., 75 Ore. 200, 146 Pac. 819 (1915).
R. I. Simone *v.* Rhode Island Co., 28 R. I. 186, 66 Atl. 202 (1907).
S. C. Mack *v.* South-Bound R. Co., 52 S. C. 323, 29 S. E. 905 (1897).
S. D. Sternhagen *v.* Kozel, 40 S. D. 396, 167 N. W. 398 (1918).
Tenn. Memphis St. R. Co. *v.* Bernstein, 137 Tenn. 637, 194 S. W. 902 (1917).
Tex. Gulf, etc. R. Co. *v.* Hayter, 93 Tex. 239, 54 S. W. 944 (1900).
Wash. O'Meara *v.* Russell, 90 Wash. 557, 156 Pac. 550 (1916).
Wis. Pankopf *v.* Hinkley, 141 Wis. 146, 123 N. W. 625 (1909).

be none for its consequences.[29] The doctrine is thus stated in *Mitchell* v. *Rochester R. Co.*,[30] per Martin, J.:

"Assuming that fright cannot form the basis of an action, it is obvious that no recovery can be had for injuries resulting therefrom. That the result may be nervous disease, blindness, insanity, or even a miscarriage, in no way changes the principle. These results merely show the degree of fright or the extent of the damages. The right of action must still depend upon the question whether a recovery may be had for fright. If it can, then an action may be maintained, however slight the injury. If not, then there can be no recovery, no matter how grave or serious the consequences. Therefore, the logical[31] result of the respondent's concession would seem to be, not only that no recovery can be had for mere fright, but also that none can be had for injuries which are the direct consequences of it."

Of this reasoning it is to be said that the premise is admitted,[32] but not the conclusion. The reason that negligence causing mere fright is not actionable is for want of damage. *De minimis non curat lex.* The mere temporary emotion of fright not resulting in physical injury is, in contemplation of law, no injury at all, and hence no foundation of an action.[33] In like manner negligence *per se* is not actionable, but negligence causing injury is. In each case the gist of the action is the injury flowing from defendant's wrongful act. Physical injury, therefore, caused by defendant's wrongful act is actionable, whether the wrongful act operates through the medium of impact or of nervous shock.[34]

The fallacy of denying recovery on this ground has been clearly

[29] Mitchell *v.* Rochester R. Co., 151 N. Y. 107, 45 N. E. 354 (1896); St. Louis, etc. R. Co. *v.* Bragg, 69 Ark. 402, 64 S. W. 226 (1901).

[30] 151 N. Y. 107, 109, 45 N. E. 354 (1896).

[31] As an illustration of the conflict of opinion among the authorities denying recovery as to the reasons upon which the rule is based, see Smith *v.* Postal Telegraph Cable Co., 174 Mass. 576, 55 N. E. 380 (1899), where it is said, per Holmes, C. J.: "The point decided in *Spade* v. *Lynn & Boston Railroad*, 168 Mass. 285, and *White* v. *Sander*, 168 Mass. 296, is not put as a logical deduction from the general principles of liability in tort, but as a limitation of these principles upon purely practical grounds."

[32] Memphis St. R. Co. *v.* Bernstein, 137 Tenn. 637, 194 S. W. 902 (1917); Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119 (1906).

[33] Gulf, etc. R. Co. *v.* Trott, 86 Tex. 412, 25 S. W. 419 (1894); Atchison, etc. R. Co. *v.* McGinnis, 46 Kan. 109, 26 Pac. 453 (1891).

[34] O'Meara *v.* Russell, 90 Wash. 557, 156 Pac. 550 (1916).

exposed by Evans, J., in the following passage from his opinion in *Alabama Fuel & Iron Co.* v. *Baladoni*:[35]

"Damages, when confined to fright alone, is dealing with a metaphysical, as contradistinguished from a physical, condition, with something subjective instead of objective, and entirely within the realm of speculation. So the damages suffered where the only manifestation is fright are too subtle and speculative to be capable of admeasurement by any standard known to the law; but when the damages are physical and objective as consequent upon the physical pain and incapacity manifested by and ensuing upon a miscarriage, the damages are quite as capable of being measured by a jury as if they had ensued from an impact or blow." [36]

The error in this respect is largely due to a misconception of the nature of nervous shock and to a confusion between nervous shock and mental anguish. Thus, it is said, in one case,[37] that "'Nervous prostration' is largely a mental, and not a physical, condition."

So *Wyman* v. *Leavitt*[38] is often cited [39] as authority for the doctrine that there can be no recovery for nervous shock without impact, but that was an action for mental suffering caused by fear of the plaintiff that she would be injured by blasting conducted near her residence by the defendant. No shock nor physical injury of any kind was proved, and the court, speaking through Virgin, J., expressly said: "Whether a fright of sufficient severity to cause a physical disease would support an action, we need not now inquire." [40] A shock to the nerves is not an affection of the mind, but of the body.[41] The nerves are as truly a part of the human body as the bones or the muscles,[42] and an injury to the

[35] 15 Ala. App. 316, 320, 73 So. 205 (1916).

[36] And see to the same effect O'Meara *v.* Russell, 90 Wash. 557, 156 Pac. 550 (1916).

[37] Cleveland, etc. R. Co. *v.* Stewart, 24 Ind. App. 374, 381, 56 N. E. 917 (1900).

[38] 71 Me. 227 (1880).

[39] Mitchell *v.* Rochester R. Co., 151 N. Y. 107, 109, 45 N. E. 354 (1896); Spade *v.* Lynn & Boston R. Co., 168 Mass. 285, 289, 47 N. E. 88 (1897).

[40] Other cases sometimes cited as denying recovery for nervous shock, but in reality denying recovery for mental anguish, are: Jones *v.* Western Union Tel. Co., 233 Fed. 301 (1916); Trigg *v.* St. Louis, etc. R. Co., 74 Mo. 147 (1881); Crutcher *v.* The Big Four, etc. R. Co., 132 Mo. App. 311, 111 S. W. 891 (1908).

[41] Sloane *v.* Southern California Ry. Co., 111 Cal. 668, 680, 44 Pac. 320 (1896); Mack *v.* South-Bound R. Co., 52 S. C. 323, 334, 29 S. E. 905 (1897); Watson *v.* Dilts, 116 Iowa, 249, 89 N. W. 1068 (1902).

[42] Watson *v.* Dilts, 116 Iowa, 249, 252, 89 N. W. 1068 (1902); Purcell *v.* St. Paul City Ry. Co., 48 Minn. 134, 50 N. W. 1034 (1892).

nerves is therefore just as truly a physical injury as a broken bone or a strained muscle.[43]

The first reason assigned for denying recovery for nervous shock resulting from fright may therefore be dismissed with the statement that while it is true no recovery may be had for mere fright for want of a physical injury, yet physical injury resulting from a wrongful act is actionable whether the injury be to the nerves or to some other part of the body, and regardless of whether the link in the chain of causation between the wrongful act and the injury to the nerves is physical impact or fright. The essential thing is the existence of the link in the chain of causation, not the character of that link.

A second reason for denying recovery for damages for fright causing nervous shock is that such damages are too remote.[44] Thus, in pronouncing judgment in *Victorian Railways Commissioners* v. *Coultas*,[45] it is said by Sir Richard Couch: "Damages arising from mere sudden terror unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their Lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper." And, again, in *Ward* v. *West Jersey, etc. R. Co.*,[46] this reason is stated as follows, per Gummere, J.:

"The doctrine of non-liability affirmed in the several opinions referred to, rests upon the principle that a person is legally responsible only for the *natural* and proximate results of his negligent act. Physical suffering is not the probable or natural consequences of fright, in the case of a person of ordinary physical and mental vigor; and in the general conduct of business, and the ordinary affairs of life, although we are bound to anticipate and guard against consequences, which may be injurious to persons who are liable to be effected thereby, we have a

[43] See Yates *v.* South Kirby, etc. Collieries, [1910] 2 K. B. 538, 542, where it is said, per Farwell, L. J.: "In my opinion nervous shock due to accident which causes personal incapacity to work is as much 'personal injury by accident' as a broken leg."

[44] Victorian Railways Com'rs *v.* Coultas, L. R. 13 A. C. 222 (1888); Ewing *v.* Pittsburgh, etc. R. Co., 147 Pa. St. 40, 23 Atl. 340 (1892); Braun *v.* Craven, 175 Ill. 401, 51 N. E. 657 (1898); Ward *v.* West Jersey, etc. R. Co., 65 N. J. L. 383, 47 Atl. 561 (1900); McGee *v.* Vanover, 148 Ky. 737, 147 S. W. 742 (1912); Chittick *v.* Philadelphia Rapid Transit Co., 224 Pa. 13, 73 Atl. 4 (1909); Miller *v.* Baltimore, etc. R. Co., 78 Oh. St. 309, 85 N. E. 499 (1908).

[45] L. R. 13 A. C. 222, 225 (1888).

[46] 65 N. J. L. 383, 385, 47 Atl. 561 (1900).

right, in doing so, to assume, in the absence of knowledge to the contrary, that such persons are of average strength both of body and mind."

The fallacy here is in assuming that any damages may be too remote which flow in an unbroken chain of causation from the defendant's wrongful act, or that fright may not be a link in the chain between the wrongful act and the damage. "Remoteness as a legal ground for the exclusion of damage in an action of tort means, not severance in point of time, but the absence of direct and natural causal sequence — the inability to trace in regard to the damage the *propter hoc* in a necessary or natural descent from the wrongful act." [47] Thus, if the firing of a pistol frightens a woman, and the fright so operates on her nervous or physical system as to cause a miscarriage or other physical injury, the fright is but a link in the chain of causation connecting the firing of the pistol with the physical injury.[48] So, if an explosion causes fright, and the fright a faint, which in turn causes a fall resulting in bodily injury.[49]

In such cases, it must be admitted that the fright is a cause "without which" the injury would not have happened. It is not, however, an intervening, efficient cause,[50] nor an independent concurring cause. It can, therefore, be only a link in the chain of causation connecting the defendant's wrongful act with the injury and damages.[51] Thus, to use the illustration of Evans, J.: [52]

"Where one is placed in sudden peril, and but for his fright consequent thereon the injury would not have occurred, the injured person under the stress of emergency is not chargeable with contributory negligence if he fail to act as under ordinary circumstances he might, but the injury is referable solely to the primary, negligent act that set in motion the dangerous agency." [53]

---

[47] Dulieu *v.* White & Sons, [1901] 2 K. B. 669, 677, 678, per Kennedy, J.

[48] Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 73 So. 205 (1916).

[49] Salmi *v.* Columbia, etc. R. Co., 75 Ore. 200, 146 Pac. 819 (1915).

[50] Herein lies the error in Morris *v.* Lackawanna, etc. R. Co., 228 Pa. 198, 77 Atl. 445 (1910), in which the physical injury is treated as due to fright as an independent, intervening cause rather than to the defendant's wrongful act, although it was clearly shown that the wrongful act had caused the fright.

[51] Purcell *v.* St. Paul City R. Co., 48 Minn. 134, 50 N. W. 1034 (1892).

[52] Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 321, 73 So. 205 (1916).

[53] And see to the same effect Purcell *v.* St. Paul City R. Co., 48 Minn. 134, 50 N. W. 1034 (1892); Pankopf *v.* Hinkley, 141 Wis. 146, 123 N. W. 625 (1909); Green *v.* Shoemaker, 111 Md. 69, 73 Atl. 688 (1909).

No better evidence of the absurdity of the rule denying recovery for personal injuries resulting from fright on the ground that the damage is too remote could be desired than the circumstance that many of the cases denying a recovery for injury resulting from fright alone authorize a recovery for physical injuries resulting from fright where the fright was also accompanied by trifling impact in itself causing little or no injury.[54]

If, for example, the defendant negligently frightens the plaintiff, and the fright causes the plaintiff to experience a nervous shock and also to fall, and the fall results in bodily bruises, the plaintiff, it is conceded, may recover, not only for the bruises but also for the nervous shock.[55] Yet in this case the nervous shock for which recovery is allowed is no less remote from the fright which caused it than it would have been if unaccompanied by the fall and bruises. The argument of remoteness, therefore, fails.

The argument in the Ward case [56] against liability for nervous shock resulting from fright because nervous shock is not the natural or probable result of fright is based on the old fallacy of "foreseeability" as the test of liability in tort. The circumstances as they appear to the defendant at the time of injury — the likelihood of his act or failure to act to cause harm — are important in determining whether the defendant has violated a duty imposed upon him by the law. Running a railroad train at sixty miles per hour in the country, for example, may not be negligent, because the rate of speed alone, under the circumstances, will not naturally or probably cause harm or injury to persons at crossings, but the same rate of speed maintained through a village or city with numerous highway crossings not protected by gates and the obstruction of view incident to the existence of buildings near the crossings is negligence, because highly probable to result in harm. But once admit the existence of negligence in the operation of the train, and the railroad is liable for all the damages resulting therefrom in an

[54] McGee *v.* Vanover, 148 Ky. 737, 147 S. W. 742 (1912).

[55] Conley *v.* United Drug Co., 218 Mass. 238, 105 N. E. 975 (1914), in which it was agreed that plaintiff's damages should be assessed at $600, of which the greater part was obviously for the nervous shock rather than for the fall and trifling bruises.

[56] Ward *v.* West Jersey, etc. R. Co., 65 N. J. L. 383, 47 Atl. 561 (1900). And see also Chittick *v.* Philadelphia Rapid Transit Co., 224 Pa. 13, 73 Atl. 4 (1909); Braun *v.* Craven, 175 Ill. 401, 51 N. E. 657 (1898); Mitchell *v.* Rochester Ry. Co. 151 N. Y. 107, 45 N. E. 354 (1896).

unbroken chain of causation, even though the particular damages could not be foreseen.

In truth, the test of the measure of damages in tort is not "foresight," but "hindsight." Once establish the tort — the defendant's wrongful act or neglect — and he is liable, not merely for such damages as he could have foreseen, but for all damages that have actually resulted.[57] Otherwise the defendant's foresight, rather than the plaintiff's injury, would be the measure of recovery.

The fallacy of the foresight test of the measure of damages as applied to torts has repeatedly been exposed.[58] Yet patently unsound as it is, it continues to be applied in some jurisdictions,[59] partly no doubt out of deference to early precedents, but in large measure because of a confusion of ideas and of the thoughtless repetition of a familiar phrase without the intellectual exertion required to ascertain its meaning and the limits of its application.

A typical illustration of the erroneous application of the "foreseeability test" is furnished by the case of *Braun* v. *Craven*.[60] Here the defendant, a landlord, entered upon leased premises stealthily, and in an angry and violent manner forbade the plaintiff, the tenant's sister, to move from the premises, thus frightening the plaintiff and causing her such nervous shock as to bring on St. Vitus's dance. The court admitted that the conduct of the defendant was negligent, saying, "appellee might have reasonably anticipated that his acts would cause excitement or even fright";

---

[57] Ehrgott *v.* New York, 96 N. Y. 264, 281 (1884), where it is said, per Earl, J.: "The true rule, broadly stated, is that a wrong-doer is liable for the damages which he causes by his misconduct."

[58] Mack *v.* South-Bound R. Co., 52 S. C. 323, 29 S. E. 905 (1898) [quoting Wardlaw, J., in Harrison *v.* Berkeley, 1 Strob. (S. C.) 525 (1847), as follows: "It is, therefore, required that the consequences to be answered for, should be natural as well as proximate. . . . By this I understand not that they should be such as upon a calculation of chances would be found likely to occur nor such as extreme prudence might anticipate, but only that they should be such as have actually ensued, one from another, without the concurrence of any such extraordinary conjuncture of circumstances or the intervention of any such extraordinary result as that the usual course of nature should seem to have been departed from"]. And see Ehrgott *v.* New York, *supra;* Green-Wheeler Shoe Co. *v.* Chicago, etc. R. Co., 130 Iowa, 123, 106 N. W. 498 (1906); Coy *v.* The Indianapolis Gas. Co., 146 Ind. 655, 46 N. E. 17 (1897).

[59] Smith *v.* Postal Telegraph Cable Co., 174 Mass. 576, 578, 55 N. E. 380 (1899), where it is said, per Holmes, C. J.: "Negligence with reference to a given consequence means that the consequence ought to have been foreseen."

[60] 175 Ill. 401, 51 N. E. 657 (1898).

but denied liability on the ground that "fright and excitement so seldom result in a practically incurable disease that, from the ordinary experience of mankind, such a result could not have been expected." The true rule, of course, is that if the defendant could have foreseen that his wrongful act was likely to frighten the plaintiff, he is liable for all the consequences resulting in a regular chain of causation from the fright, regardless of whether he should have foreseen the particular consequences.

This rule is understood and, not without the traditional confusion in the use of the words "natural and probable," is correctly applied, in *Pankopf* v. *Hinkley*,[61] in which recovery was allowed for a miscarriage due to nervous shock, without physical impact, produced by defendant's negligence in permitting the automobile he was driving to collide with the carriage in which the plaintiff was riding. Thus it is said by the court, per Winslow, C. J.:

"Now, if the shock can legally operate as the connecting link between the defendant's negligent act and the plaintiff's miscarriage, so that the negligence was truly the cause which operated first and set in motion the train of events which ended in the miscarriage as the natural and probable result, then it does not become necessary to decide whether 'shock' as here used is a physical or mental disturbance, or whether, as seems more reasonable, it partakes of both."

The third reason assigned for denying recovery for nervous shock, without impact, is that it is contrary to public policy to open the courts to actions of this character as tending to stir up litigation, and to promote fraud and the presentation of claims for injuries beyond the capacity of juries properly to assess.[62] Thus, it is said in *Mitchell* v. *Rochester Ry. Co.*,[63] per Martin, J.:

"If the right of recovery in this class of cases should be once established, it would naturally result in a flood of litigation in cases where the injury complained of may be easily feigned without detection, and where the damages must rest upon mere conjecture or speculation. The difficulty which often exists in cases of alleged physical injury, in determining

[61] 141 Wis. 146, 123 N. W. 625 (1909).

[62] Victorian Railways Com'rs *v.* Coultas, L. R. 13 A. C. 222 (1888); Ewing *v.* Pittsburgh, etc. R. Co., 147 Pa. St. 40, 23 Atl. 340 (1892); Mitchell *v.* Rochester Ry. Co., 151 N. Y. 107, 45 N. E. 354 (1896); Spade *v.* Lynn & Boston R. R. 168 Mass. 285, 47 N. E. 88 (1897); Braun *v.* Craven, 175 Ill. 401, 51 N. E. 657 (1898); Ward *v.* West Jersey, etc. R. Co., 65 N. J. L. 383, 47 Atl. 561 (1900).

[63] 151 N. Y. 107, 110, 45 N. E. 354 (1896).

whether they exist, and if so, whether they were caused by the negligent act of the defendant, would not only be greatly increased, but a wide field would be opened for fictitious or speculative claims. To establish such a doctrine would be contrary to principles of public policy."

Or, as this doctrine of expediency is more baldly stated by the Supreme Court of Pennsylvania: [64]

"All the cases [allowing a recovery] are of recent and unhealthy growth, and none of them stands squarely on the ancient ways. In the last half century the ingenuity of counsel, stimulated by the cupidity of clients and encouraged by the prejudices of juries, has expanded the action for negligence until it overtops all others in frequency and importance, but it is only in the very end of that period that it has been stretched to the effort to cover so intangible, so untrustworthy, so illusory and so speculative a cause of action as mere mental disturbance. It requires but a brief judicial experience to be convinced of the large proportion of exaggeration and even of actual fraud in the ordinary action for physical injuries from negligence, and if we opened the door to this new invention the result would be great danger, if not disaster, to the cause of practical justice."

So also Holmes, C. J., in *Smith* v. *Postal Telegraph Cable Co.*,[65] says: "The point decided in *Spade* v. *Lynn & Boston Railroad*, 168 Mass. 285, and *White* v. *Sander*, 168 Mass. 296, is not put as a logical deduction from the general principles of liability in tort, but as a limitation of those principles upon purely practical grounds." Or, as expressed by the same judge on another occasion,[66] the exemption from damages of this kind "is an arbitrary exception, based upon a notion of what is practicable."

An analysis of the opinions denying recovery in such cases on the ground of public policy discloses that the alleged public policy is based on one or more of the following reasons:

First, there is no precedent for such a recovery prior to the latter part of the nineteenth century;

Second, allowance of recovery would increase litigation;

Third, allowance of recovery would lead to the bringing of actions on fraudulent claims;

---

[64] Per Mitchell, C. J., in Huston *v.* Freemansburg, 212 Pa. 548, 61 Atl. 1022 (1905).

[65] 174 Mass. 576, 577, 578, 55 N. E. 380 (1899).

[66] Homans *v.* Boston Elevated R. Co., 180 Mass. 456, 457, 62 N. E. 737 (1902).

Fourth, damages from nervous shock are difficult to prove and measure.

In any discussion of the denial of a right of action on the ground of public policy, it must be borne in mind that the general theory upon which the common law is based is that there is a remedy for every wrong, and in any case in which A is shown to have committed a wrongful act as a proximate result of which B has suffered damage, there is a very strong presumption in favor of a right of action by B against A. If B's right to maintain such an action is denied on the ground of public policy, such policy must be made very clearly to appear and must be strongly grounded on considerations of the public welfare. As very properly said by Evans, J., in *Alabama Fuel & Iron Co.* v. *Baladoni:* [67]

"The doctrine of expediency or public policy . . . is a doctrine that should be very sparingly and cautiously employed, for if a person's rights have been unlawfully invaded, it would ill become a court of justice to withhold its remedy on the ground of expediency."

The first reason alleged for the existence of the alleged public policy is no reason at all. If it were, every case of first instance would be decided against the party invoking the new rule of law or the new application of an old rule. It would put an end to all growth or progress of the law through judicial decision. If applied a hundred years ago, it would have denied recovery for physical injury suffered by contact with an electric wire, and five hundred years ago recovery for injury inflicted by the negligent handling of gunpowder. The Anglo-American is a living — not a dead — system of law, is a growing and expanding body of rules, so recognized by all the courts engaged in its administration. To say that an action may not be brought for a personal injury because no action for that particular injury or for an injury inflicted in that particular manner was ever brought before 1888 is not only absurd, but is contrary to principles of law long established, and in the abstract, at least, nowhere now denied.

The twofold answer to the second reason assigned for the alleged public policy is that the allowance of a recovery of damages for physical injuries caused by fright has not increased litigation to any marked extent; and that even if it had,

[67] 15 Ala. App. 316, 321, 322, 73 So. 205 (1916).

public policy does not forbid increased litigation for the redress of wrongs.

Upon the first point we have the testimony of Gaines, C. J., in *Gulf, etc. Ry. Co.* v. *Hayter*,[68] as follows: "The reported cases would indicate that the litigations arising from injuries inflicted through a mental shock are not so numerous as to cause any considerable increase of litigation." Furthermore, a denial of recovery for such injuries has wholly failed to put a stop to actions brought for this purpose, as witness the reported cases in Massachusetts,[69] New York,[70] and Pennsylvania.[71] The doctrine as originally declared in Massachusetts and New York has not been strictly adhered to in all subsequent cases in these jurisdictions,[72] the early English case denying recovery has been overruled,[73] the current of judicial opinion has set clearly in favor of a recovery, and it is not unreasonable to expect that actions for the recovery of damages for such injuries will continue to be brought even in those jurisdictions where recovery has heretofore been denied in the not altogether unfounded hope of a modification or even abolition of the existing doctrine denying recovery.

Nor is it desirable to prevent an increase of actions for the recovery of damages for personal injuries resulting from fright so long as such actions are necessary to obtain redress for injuries of this character. While public policy is concerned with the discouragement of merely vexatious litigation, it is equally concerned with providing a means of legal redress for every wrong. It is true, as stated by Chief Justice Mitchell,[74] that actions for negligence have greatly increased in the last half century, but the action for negligence has not on that account been abolished. To deny a recovery of damages for personal injuries caused by negligence without providing another remedy, as has been done in some cases by the workmen's compensation acts, would be a gross injustice,

---

[68] 93 Tex. 239, 242, 54 S. W. 944 (1900).

[69] See cases cited 17 C. J. 839, note 94.

[70] *Ibid.*

[71] *Ibid.*

[72] See for Massachusetts, Conley *v.* United Drug Co., 218 Mass. 238, 105 N. E. 975 (1914), and for New York, Cohn *v.* Ansonia Realty Co., 162 App. Div. 791, 148 N. Y. Supp. 39 (1914).

[73] See *ante*, p. 216.

[74] In Huston *v.* Freemansburg, 212 Pa. 548, 61 Atl. 1022 (1905).

and the frequency with which such suits are brought, after making liberal allowance for groundless claims, is the strongest evidence of the amount of injury inflicted and of the justice of the rule allowing a recovery. Every argument in favor of the maintenance of actions for negligence in general is also an argument in favor of that particular class of actions for negligence which are brought to recover damages for personal injuries due to fright caused by defendant's negligence.

But it is said that the award of damages for nervous shock caused by fright will make possible recovery for fraudulent claims. Yet this reason in itself has never been held sufficient to deny recovery for real injuries the existence of which have been proved under the rules of procedure established for the purpose of ascertaining facts. The Supreme Court of Pennsylvania, in *Huston* v. *Freemansburg*,[75] complains of "the large proportion of exaggeration and even of actual fraud in the ordinary action for physical injuries from negligence," but it does not go so far as to say that on this account no recovery should ever be allowed for physical injuries resulting from negligence. Why, then, deny the right of recovery for actual physical injuries inflicted in a particular manner — through nervous shock caused by fright — simply because fraudulent claims of this character may be preferred?

In the language of Evans, J., in *Alabama Fuel & Iron Co.* v. *Baladoni:* [76]

"It may be that physical injuries springing out of fright are easily simulated and relief granted in such instances would open the door to fraud and imposture; but this is a matter involving the proof of the case and is addressed rather to the good sense and honesty of purpose of our juries than to the courts."

To the same effect, also, it is said, per Gaines, J., in *Hill* v. *Kimball*,[77]

"That a physical personal injury may be produced through a strong emotion of the mind there can be no doubt. The fact that it is more difficult to produce such an injury through the operation of the mind than by direct physical means affords no sufficient ground for refusing

[75] 212 Pa. 548, 61 Atl. 1022 (1905).

[76] 15 Ala. App. 316, 321 73 So. 205 (1916).

[77] 76 Tex. 210, 215, 13 S. W. 59 (1890). And see to the effect Dulieu *v.* White & Sons, [1901] 2 K. B. 669, per Kennedy, J.

compensation in an action at law when the injury is intentionally or negligently inflicted. It may be more difficult to prove the connection between the alleged cause and the injury, but if it be proved, and the injury be the proximate result of the cause, we cannot say that a recovery should not be had."

The fourth reason is closely akin to the third, but is based not so much on the idea of forbidding the presentation of claims as upon the incapacity of the jury to discriminate between meritorious and fraudulent claims and upon its further incapacity to determine the proper amount of recovery for injuries of this character. But the very function of the jury is to sift evidence and to determine whether an injury has been proved, the extent of the injury, and the proper measure of compensation in money. The problem of determining liability in actions for physical injuries due to nervous shock caused by fright is largely one of tracing the chain of causation from the fright to the ultimate physical injury. Damages are allowed for nervous shock when accompanied by impact. The absence of impact, however, makes such damages no more difficult to trace. In like manner the proper measure of recovery for physical injuries generally is difficult to determine. But the law does not, on that account, deny all recovery. Nervous shock resulting from fright is just one species of physical injury, and the rules of law, governing the right of recovery therefor, and the measure of recovery, are, or should be, the same as in all other cases of physical injury.[78] The refusal to apply these general rules to actions for this particular kind of physical injury is nothing short of a denial of justice.[79] "Such a course," it is said, per Kennedy, J., in *Dulieu* v. *White & Sons*,[80]

"involves the denial of redress in meritorious cases, and it necessarily implies a certain degree of distrust, which I do not share, in the capacity of legal tribunals to get at the truth in this class of claim. My experience gives me no reason to suppose that a jury would really have more difficulty in weighing the medical evidence as to the effects of nervous

[78] Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 73 So. 205 (1916). And see the recent case of Janvier *v.* Sweeney and Barker, [1919] 2 K. B. 316, allowing a recovery for illness caused by fright, produced by false statements and threats.

[79] Simone *v.* Rhode Island Co., 28 R. I. 186, 195, 66 Atl. 202 (1907), where the denial of recovery on the ground of expediency is characterized, per Parkhurst, J., as "a pitiful confession of incompetence on the part of courts of justice."

[80] [1901] 2 K. B. 669, 681.

shock through fright, than in weighing the like evidence as to the effects of nervous shock through a railway collision or a carriage accident, where, as often happens, no palpable injury, or very slight palpable injury, has been occasioned at the time."

If A, by his negligence, brushes slightly against B, a pregnant woman, and while doing her no injury by the impact, yet frightens her so badly that a nervous shock results from the fright — not from the impact — and the nervous shock causes B to have a miscarriage, it is admitted that she may recover from A for the physical pain and suffering endured by her in the shock and miscarriage. But, it is said, if A is driving negligently on the street, and stops his horse within a few inches of impact with B, but frightens her just as badly as in the former case, with the resultant nervous shock and miscarriage, B may not recover from A,[81] albeit her physical injury is just as great as before and just as much due to A's fault. A rule of liability so highly technical, so completely without foundation in reason, is not out of place in a primitive system of jurisprudence, but is unworthy of any system based on the theory of granting redress for every substantial wrong.

The fallacies of the arguments by which the rule denying recovery has been supported, the essential reason of the rule, and the grave injustice of its application have been so often exposed that it is high time our courts — many of them operating under constitutions solemnly guaranteeing remedies for every injury[82] — shall no longer deny redress for that particular personal injury which is due to nervous shock caused by fright. No vested rights have been acquired under decisions denying such a recovery, and no inconvenience or injustice, but rather a tardy justice, would result from the courageous action of the courts in these jurisdictions overruling their former decisions, as was done in England, and establishing the rule of reason and justice, to this extent making good the boast of the law that it provides a remedy for every wrong.[83]

[81] Mitchell *v.* Rochester Ry. Co., 151 N. Y. 107, 45 N. E. 354 (1896).

[82] Witness, for example, the Ohio Constitution, Art. I, sec. 16: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay." Yet, the Supreme Court of the State, in Miller *v.* Baltimore, etc. R. Co., 78 Oh. St. 309, 85 N. E. 499 (1908), has denied justice and refused any remedy for that particular injury done to one's person which results from nervous shock caused by fright.

[83] See Stewart *v.* Arkansas Southern R. Co., 112 La. 764, 36 So. 676 (1904); Green *v.* Shoemaker, 111 Md. 69, 73 Atl. 688 (1909).

In those jurisdictions in which recovery for nervous shock caused by fright is denied, consistency requires that where physical impact and fright are coincident in point of time and are followed by shock resulting in physical injuries, no recovery shall be allowed for the physical injuries and shock if they are caused by the fright alone. In other words, the physical impact must not only accompany the fright, but must in part, at least, cause the shock in order to enable the plaintiff to recover for the shock and its effects. And this is the position taken in the New York case of *Hack* v. *Dady*.[84]

As a general rule, however, even in the jurisdictions denying recovery for nervous shock caused by fright without impact, if it is shown that fright and impact were coincident in point of time, recovery is allowed for the resulting shock and physical injuries without inquiry as to whether the shock was caused by the concurrence of fright and impact or by fright alone.[85] The cases which thus allow a recovery for injuries resulting from fright when accompanied by impact impliedly admit the justice of recovery for the physical consequences of fright, and in undertaking to deny such recovery where the fright is not accompanied by impact are thrown back upon untenable arguments based largely upon the difficulty of proving the tort and damages in the absence of impact. With the demonstration of the insufficiency of these arguments, the only obstacle remaining in these jurisdictions to the allowance of a recovery for nervous shock resulting wholly from fright is the existence of precedents denying such a recovery. As stated before, however, these precedents do not establish a rule of property. They merely constitute a limitation on the administration of justice in a particular class of cases — a limitation indefensible in logic and unjust in operation, which should therefore be abolished as a step forward in the development of an enlightened system of jurisprudence.

Both in the jurisdictions in which recovery for nervous shock caused by fright without impact is denied,[86] and also in those in

[84] 142 App. Div. 510, 127 N. Y. Supp. 22, 25 (1911).

[85] Samarra *v.* Allegheny Valley St. Ry., 238 Pa. 469, 86 Atl. 287 (1913); McGee *v.* Vanover, 148 Ky. 737, 147 S. W. 742 (1912); Buchanan *v.* West Jersey R. Co., 52 N. J. L. 265, 19 Atl. 254 (1890); Homans *v.* Boston Elevated R. Co., 180 Mass. 456, 62 N. E. 737 (1902); Jones *v.* Brooklyn Heights Ry. Co., 23 App. Div. 141, 48 N. Y. Supp. 914 (1897); Denver, etc. R. Co. *v.* Roller, 100 Fed. 738 (1900).

[86] Fleming *v.* Lobel, 59 Atl. (N. J. L.), 28 (1904).

which as a general rule it is allowed,[87] such recovery is denied if the plaintiff's fright proceeds not from fear of personal injury to himself but from fear of injury to his property, or to the person of another. Thus, it is said, per Kennedy, J., in *Dulieu* v. *White & Sons:*[88] "The shock, where it operates through the mind, must be a shock which arises from a reasonable fear of immediate personal injury to oneself. A has, I conceive, no legal duty not to shock B's nerves by the exhibition of negligence towards C, or towards the property of B or C." And the rule has been applied to deny a recovery to a plaintiff who has been frightened by an attack made upon her husband in her presence,[89] or has sustained a severe nervous shock and permanent impairment of health from seeing her daughter dragged along a railway platform because of the negligence of the railway company's employees in starting the train.[90]

In a few jurisdictions, however, the validity of this exception has been denied, at least under certain circumstances. Thus, a married woman has been allowed to recover for nervous shock caused by fright at injury or threatened injury to her husband,[91] her child,[92] her property,[93] or to third persons in no wise related to her.[94] In some of these cases recovery is allowed on the ground that the plaintiff was pregnant at the time of her fright, and the defendant knew, or should have known, of her condition.[95] But in

[87] Dulieu *v.* White & Sons, [1901] 2 K. B. 669; Sanderson *v.* Northern Pac. Ry. Co., 88 Minn. 162, 92 N. W. 542 (1902); Mahoney *v.* Dankwart, 108 Iowa, 321, 79 N. W. 134 (1899).

[88] [1901] 2 K. B. 669, 675.

[89] McGee *v.* Vanover, 148 Ky. 737, 147 S. W. 742 (1913); Bucknam *v.* Great Northern R. Co., 76 Minn. 373, 79 N. W. 98 (1899).

[90] Cleveland, etc. R. Co. *v.* Stewart, 24 Ind. App. 374, 381, 56 N. E. 917 (1900). And see also Southern R. Co. *v.* Jackson, 146 Ga. 243, 91 S. E. 28 (1916), holding defendant not liable for injury to plaintiff caused by fright at the seeing her child mangled.

[91] Watson *v.* Dilts, 116 Iowa, 249, 89 N. W. 1068 (1902); Jeppsen *v.* Jensen, 47 Utah, 536, 155 Pac. 429 (1916).

[92] Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 73 So. 205 (1916).

[93] Engle *v.* Simmons, 148 Ala. 92, 41 So. 1023 (1906); Lesch *v.* Great Northern R. Co. 97 Minn. 503, 106 N. W. 955 (1906).

[94] Hill *v.* Kimball, 76 Tex. 210, 13 S. W. 59 (1890), fright to white woman by assault on two negroes.

[95] Alabama Fuel & Iron Co. *v.* Baladoni, 15 Ala. App. 316, 73 So. 205 (1916); Engle *v.* Simmons, 148 Ala. 92, 41 So. 1023 (1906). And see 1 COOLEY, TORTS, 3 ed., 98.

Hill v. *Kimball*[96] there was no evidence to charge the defendant with knowledge of the plaintiff's condition, and in other cases none to show the plaintiff was in fact pregnant or in other than normal physical condition.[97] Certainly the right of recovery in such cases cannot, upon principle, be made to turn upon the sex or condition of the plaintiff, and the logical tendency of these cases is towards the adoption and application of the broad rule of liability in all cases in which the defendant while in the commission of a wrongful act causes fright to the plaintiff, resulting in nervous shock and physical injury.

Archibald H. Throckmorton.

WESTERN RESERVE UNIVERSITY.

[96] 76 Tex. 210, 13 S. W. 59 (1890).

[97] Watson *v.* Dilts, 116 Iowa, 249, 89 N. W. 1068 (1902); Lesch *v.* Great Northern R. Co., 97 Minn. 503, 106 N. W. 955 (1906).